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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 27.11.2006.

Bachan Singh .... Appellant.

vs

Jaspal Singh and another .....Respondents.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.S.S.Chandi,Advocate,for the appellant.

Kiran Anand Lall, J.

This is regular second appeal filed by the plaintiff whose suit for permanent injunction has been dismissed by the first appellate court.

The plaintiff filed a suit for permanent injunction restraining the defendants (respondents) from demolishing his house and the boundary wall of the Haveli. He had been residing in the house, and had been using the Haveli for tethering cattle and storing roori etc. The defendants started interfering in his peaceful possession over this property and also started threatening that they would demolish the boundary wall of the Haveli, Therefore, the plaintiff had to file the suit for permanent injunction.

The defendants contested the suit, by filing a written statement. According to them, Pritam Singh, brother of the plaintiff, had also, earlier, filed a suit (no.378/95 dated 16.8.1995), titled Pritam Singh vs Mangal Singh etc., in respect of this property, which was dismissed vide judgment and decree dated 26.5.1997. His appeal was also dismissed by the learned Additional District Judge on 3.1.2002. In fact, no `Haveli' exists at the spot nor the door of plaintiff's house opens towards any `Haveli'.

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Parties went to trial on the following issues:-

1. Whether the plaintiff is entitled to sue for a decree of permanent injunction? OPP
2. Whether the suit in the present form is not maintainable? OPD
3. Whether the plaintiff has not come to the court with clean hands? OPD
4. Relief.

The trial court decreed the suit, placing reliance on the solitary statement of the plaintiff to the effect that the disputed property is in his possession. The first appellate court, however, set aside the decree and dismissed the suit, finding that there was no documentary proof regarding the ownership of the plaintiff qua the disputed property viz. Haveli. It was also neither proved nor even pleaded as to when the plaintiff came into possession of the alleged `Haveli' and how. About the electricity bills produced in evidence, it has been found by the first appellate court that the electricity meter is installed in the house, and it cannot, therefore, be said, on the basis of those bills, that the plaintiff is in possession of any `Haveli' also. The plaintiff had claimed that the area of his house is one kanal. But, he was contradicted on this point by his sole witness, Teja Singh (PW2), who deposed that the area of his (of plaintiff) house is ten marlas only. In the site plan, Ex.P1, too, dimensions of the disputed property were not given. The first appellate court rightly observed in para no.9 of the judgment that in the absence of dimensions of the property, it was not possible to identify it, and as such, no vague injunction could be granted. In fact, the brother of the plaintiff (Pritam Singh) had also, earlier, filed a suit in respect of the same property but that was dismissed. He had lost in appeal

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also.

No question of law, much less a substantial one, arises for determination, in this appeal.

In view of the above, the appeal deserves to be dismissed in limine, and it is so ordered.

27.11.2006. (Kiran Anand Lall)
vs. Judge.